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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,249	12/20/2001	Gregory D. May	7000-209	9021

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WITHROW & TERRANOVA, P.L.L.C.
100 REGENCY FOREST DRIVE
SUITE 160
CARY, NC 27518

EXAMINER

WANG, QUAN ZHEN

ART UNIT	PAPER NUMBER
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2613

MAIL DATE	DELIVERY MODE
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02/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/027,249

Applicant(s)

MAY ET AL.

Examiner

Quan-Zhen Wang

Art Unit

2613

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED _____ FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3-5,7,10-12,14-18,24 and 25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

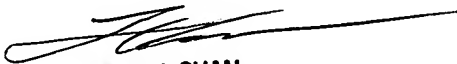
Applicant's arguments filed February 14, 2008 have been fully considered but they are not persuasive.

Applicant argues that "none of the references, either alone or in combination, disclose or suggest controlling an optical amplifier in accordance with a power of optical signals in order to regulate the optical power of an optical signal." Examiner disagrees. As it is admitted by Applicant, "Sugaya discloses a photodiode 31, which converts a wavelength-division-multiplexed signal into an electric signal, and sends the electric signal to a total-power uniformizing controller 32. Furthermore, Sugaya discloses a control correction unit 33, which outputs a signal to an excitation light source 29 based on the output from the total-power uniformizing controller 32 or a peak detection circuit 15. In addition, the excitation light source 29 controls a level of light output from an optical amplifying fiber 28." It is crystal clear that Sugaya "controls the optical amplifier using the measured optical power signal".

Applicant admits "the excitation light source 29 controls the amount of light that is output from the optical amplifying fiber 28", but argue that "the excitation light source 29 does not control an optical signal power, i.e., increasing or decreasing the optical strength, of an optical signal". Examiner disagrees with Applicant's logic reasoning. One of ordinary skill in the art would clearly understand that "the amount of light that is output from the optical amplifying fiber 28" is equivalent to "the optical strength of an optical signal". In other words, the phrase "the excitation light source 29 controls the amount of light that is output from the optical amplifying fiber 28" implies that "the excitation light source 29 DOES control an optical signal power, i.e., increasing or decreasing the optical strength, of an optical signal".

For the instant case, even according to Applicant, "Sugaya discloses a photodiode 31, which converts a wavelength-division-multiplexed signal into an electric signal, and sends the electric signal to a total-power uniformizing controller 32. Furthermore, Sugaya discloses a control correction unit 33, which outputs a signal to an excitation light source 29 based on the output from the total-power uniformizing controller 32 or a peak detection circuit 15. In addition, the excitation light source 29 controls a level of light output from an optical amplifying fiber 28". Sugaya ONLY differs from the claimed invention in that Sugaya does not specifically disclose that the wavelength select unit is a wavelength select switch. However, a wavelength select switch is well known in the art. For example, Prohaska discloses a wavelength select switch (fig. 7). Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to incorporate a wavelength select switch, such as the one taught by Prohaska, in the system of Sugaya to replace the wavelength select unit in order to select a wavelength within a short switching time. The modified system of Sugaya and Prohaska differs from the claimed invention in that Sugaya and Prohaska do not specifically teach displaying an indication of the optical signal power in the optical signal on a monitor to a system administrator. However, it is well known in the art to display an indication of measured optical power to a system administrator. For example, Felger discloses display an indication of measured optical power (fig. 1, power display 37) to a system administrator. Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to include an optional local alarm indicator, as it is disclosed by Felger, in the modified system of Sugaya and Prohaska in order to provide an alarm signal to indicate the status of the system.

In view of the above discussion, the combination of prior art references Sugaya, Prohaska, and Felger discloses each and every limitations in the claims 1 and 12. Therefore, the rejections of claims 1 and 12 still stand. For the same reasons, the rejections of claims 3-5, 10-11, 14-18, and 24-25 still stand.


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